Mod AO 442 (09/13) Arrest Warrant AUSA Name & Telno: AUSA Robert Allen (212-637-2216) ORIGINAL

# UNITED STATES DISTRICT COURT

for the

Southern District of New York

17 MAG 3407

United States of America
v.
Robert Walter Murray
*Defendant*

Case No.

## ARREST WARRANT

To: Any authorized law enforcement officer

**YOU ARE COMMANDED** to arrest and bring before a United States magistrate judge without unnecessary delay *(name of person to be arrested)* Robert Walter Murray, who is accused of an offense or violation based on the following document filed with the court:

❒ Indictment ❒ Superseding Indictment ❒ Information ❒ Superseding Information ☑ Complaint
❒ Probation Violation Petition ❒ Supervised Release Violation Petition ❒ Violation Notice ❒ Order of the Court

This offense is briefly described as follows:

Securities Fraud (15 U.S C. 78j(b) and 78ff; 18 U.S.C. 2)
Wire Fraud (18 U.S C. 1343 and 2)

Date: 05/05/2017

*Issuing officer's signature*

City and state: New York, New York

Honorable Sarah Netburn
*Printed name and title*

**Return**

This warrant was received on *(date)* ________, and the person was arrested on *(date)* ________
at *(city and state)* ________.

Date: ________

*Arresting officer's signature*

*Printed name and title*

17 MAG 3407 ORIGINAL

Approved: ______________________
ROBERT ALLEN
Assistant United States Attorney

Before: HONORABLE SARAH NETBURN
United States Magistrate Judge
Southern District of New York

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| UNITED STATES OF AMERICA<br><br>- v. -<br><br>ROBERT WALTER MURRAY,<br><br>Defendant. | **SEALED COMPLAINT**<br><br>Violations of 15 U.S.C. §§ 78j(b) & 78ff; 17 C.F.R. § 240.10b-5; 18 U.S.C. §§ 1343 and 2.<br><br>COUNTY OF OFFENSES: New York |

SOUTHERN DISTRICT OF NEW YORK, ss.:

DIANA CHAU, being duly sworn, deposes and says that she is a Postal Inspector with the United States Postal Inspection Service and charges as follows:

**COUNT ONE**
**(Securities Fraud)**

1. In or about November 2016, in the Southern District of New York and elsewhere, ROBERT WALTER MURRAY, the defendant, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails, used and employed manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon other persons, to wit, MURRAY caused a false report of a tender offer for the shares of Fitbit Inc. ("Fitbit") to be filed with the U.S. Securities and Exchange Commission ("SEC"), and purchased and sold options in Fitbit stock in connection with the same.

(Title 15, United States Code, Sections 78j(b) & 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.)

**COUNT TWO**
**(Wire Fraud)**

2. In or about November 2016, in the Southern District of New York and elsewhere, ROBERT WALTER MURRAY, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, MURRAY caused a false report of a tender offer for the shares of Fitbit to be filed with SEC, and purchased and sold options in Fitbit stock in connection with the same.

(Title 18, United States Code, Sections 1343 and 2.)

The bases for my knowledge and the foregoing charges are, in part, as follows:

3. I am currently employed as a Postal Inspector with the United States Postal Inspection Service, and I have been employed in this position for approximately one year. During my tenure with the United States Postal Inspection Service, I have participated in multiple investigations of financial crimes and complex frauds. I am familiar with the means by which such crimes are commonly perpetrated as a result.

4. The information contained in this affidavit is based on my personal knowledge, as well as information obtained during this investigation, directly or indirectly, from other sources and agents, including documents and information provided to me by representatives of the SEC, documents provided by financial institutions and solicited investors, and documents produced in response to judicially authorized search warrants. Because this affidavit is prepared for the limited purpose of establishing probable cause, I have not set forth each and every fact I have learned in connection with this investigation. Where communications and events are referred to herein, moreover, they

are related in substance and in part. Where dates, figures, and calculations are set forth herein, they are approximate.

BACKGROUND

5. Based on my training, experience, and review of publicly available information, I have learned the following, in substance and in part:

a. At all times relevant to this Complaint, Fitbit was a publicly traded consumer-electronics company headquartered in the vicinity of San Francisco, California. Fitbit shares traded on the New York Stock Exchange under the symbol "FIT." As a company whose stock was publicly traded, Fitbit was subject to certain SEC regulations.

b. At all times relevant to this Complaint, the SEC received submissions from issuers, companies, and others who filed public documents with the SEC through the Electronic Data Gathering, Analysis, and Retrieval System ("EDGAR"). Before an entity could file a document on EDGAR, the entity was required to provide certain pedigree information about the proposed filer, including a valid email address.

c. At all times relevant to this Complaint, reports of tender offers could be filed on EDGAR. A tender offer is an offer to purchase some or all of the public shares of a corporation from its shareholders. Because tender offers are usually made at a premium to the preexisting market price, an announcement of a tender offer will commonly cause an increase in the price of the relevant stock.

OVERVIEW

6. As described in greater detail below, there is probable cause to believe that ROBERT WALTER MURRAY, the defendant, filed a fictitious report of a tender offer for Fitbit stock with the SEC in an attempt to increase the value of options that MURRAY held in Fitbit stock. Fitbit's stock increased in value in response to the tender offer, after which point MURRAY sold his Fitbit holdings for a profit.

MANIPULATION OF FITBIT SHARE PRICE

7. Based on my training, experience, and review of publicly available information, I have learned the following, in substance and in part:

a. On or about November 9, 2016, Fitbit's stock closed at approximately $8.55 per share.

b. On or about November 9, 2016, an entity purporting to be called ABM Capital LTD ("ABM") made a filing on the SEC's EDGAR system (the "Nov. 9 Filing") stating, in substance and in part, that ABM had offered to purchase all of Fitbit's stock at $12.50 per share. The filing stated, "[ABM] has announced today, November 9 2016, that it has submitted an offer (the 'Letter') to the board of directors of [Fitbit]. In the Letter, [ABM] proposes to acquire all outstanding Class A common shares at a price per share of $12.50." The filing was signed and certified as true by an individual purporting to be the Chief Financial Officer of ABM ("Alias-1"). An international phone number and address in Shanghai, China were provided for both Alias-1 and ABM. The filing became publicly accessible on EDGAR on or about the morning of November 10, 2017.

c. On or about November 10, 2016, Fitbit's stock price increased from its previous day's close of approximately $8.55 per share to approximately $9.27 per share before closing at approximately $8.86 per share. Volume of trading in Fitbit stock, moreover, was significantly higher than the previous day. Based on my training and experience, I believe that the increased price of Fitbit stock and trading volume was attributable in part to the Nov. 9 Filing.

d. On or about November 10, 2016, representatives of Fitbit denied having received the tender offer described above. As reported in the Financial Times, for example, a Fitbit spokesperson stated that "Fitbit has not received any communication from ABM Capital, or any other firm, regarding a reported offer." Financial Times, *Fitbit Says It Has Not Received Tender Offer* (Nov. 10, 2016), *available at* https://www.ft.com/content/ abe12404-7ac8-3811-9ed3-ffb93eb97304 (last accessed Nov. 30, 2016).

8. Based on my review of Fitbit's November 4, 2016 10-Q, I have learned that Fitbit had approximately 170,120,929 shares of Class A common stock outstanding as of October 31, 2016. Thus, the increase in Fitbit share price from approximately $8.55 to approximately $9.27 in response to the Nov. 9 Filing would have increased Fitbit's market capitalization by approximately $122.4 million. I have also learned, based on my conversations with representatives of the SEC and my review of

IP logs, that the Nov. 9 Filing was viewed by numerous individuals and entities in the Southern District of New York, and that multiple investors located in the Southern District of New York purchased Fitbit stock at prices temporarily inflated by the Nov. 9 Filing before selling at a loss.

## MURRAY'S FILING OF THE TENDER OFFER

9. Based on my communications with representatives of the SEC, I have learned that, on or about November 8, 2016, an individual purporting to be Alias-1 filed forms with the SEC requesting access to the SEC's EDGAR system on behalf of ABM. These forms listed a particular email address (the "ABM Account") as Alias-1's email address. This account was later used to submit the Nov. 9 Filing.

10. There is probable cause to believe that the ABM Account was created for the purpose of making the Nov. 9 Filing (and disguising the identity of the actual user of the ABM Account while doing so). Based on my review of records relating to the ABM Account, for example, I have learned the following, in substance and in part:

a. The ABM Account was created on or about November 5, 2016, which, as discussed above, is only several days before the Nov. 9 Filing.

b. A particular IP address ("IP-1") was used to access the ABM Account on or about November 5, 2017.[1]

c. Search browser history for the ABM Account reflects the following regarding the user of the ABM Account:

i. On or about November 8, 2016, the user of the ABM Account searched for "what's my ip," "ip geolocation," and visited a website that purports to be able to list the IP address and location of a computer or device (as well as how to disguise the same). Based on my training and experience, I believe that the user of the ABM Account was conducting these searches and visiting the aforementioned website in order to confirm that his IP address was disguised.

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[1] An IP, or "Internet Protocol," address is an identifier that is assigned to a computer or device (for example, a printer, router, or mobile telephone) when it communicates with other computers or devices on the internet. Based on my training and experience, I know that computers and devices are generally assigned a unique IP address; individuals inclined to mask or disguise the IP address of their computer or device, however, can do so through surreptitious and illegal means such as using another individual's wireless network or taking control of another individual's computer.

ii. On or about November 8, 2016 and November 9, 2016, after conducting the searches and visiting the website described above, the user of the ABM Account visited SEC websites related to EDGAR filings and conducted searches regarding the same. In particular, the user of the ABM Account conducted searches for "IDTI" and "Avon." I know, based on my review of publicly available sources, that IDTI is the stock symbol for the company Integrated Device Technology Inc., and that "Avon" refers to the company Avon Products, Inc. I also know that false tender offers were reportedly filed for the stock of each company in an effort to inflate their stock prices in or about April 2016 and May 2015, respectively. Indeed, on or about November 8, 2016, the user of the ABM Account accessed a Bloomberg article entitled, "Avon Stockholders Can't Take a Joke." That article describes a May 14, 2015 Avon tender offer filed with EDGAR as a "transparent hoax."[2]

11. There is probable cause to believe that ROBERT WALTER MURRAY, the defendant, controlled the ABM Account and used it to file the false Nov. 9 Filing. I believe this for the following reasons, among others:

a. The ABM Account listed another email address ("ABM Backup-1") as the associated "Recovery" address. Based on my review of emails and records associated with ABM Backup-1, I have learned the following, in substance and in part:

i. On or about October 29, 2016, ABM Backup-1 received an email that appears to be a receipt for an attempted hotel reservation in the Washington, D.C. area. The user of ABM Backup-1 supplied the name "Rob Murray" when attempting to book the hotel. I know, based on my training and experience, that individuals oftentimes supply their actual name when attempting to make hotel reservations, as hotels commonly require customers to show identification upon arrival.[3]

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[2] On or about November 10, 2016, the user of the ABM Account also visited websites for banks in the Virginia area, where, as discussed below, ROBERT WALTER MURRAY, the defendant, resides.

ii. IP-1, the IP address that, as described above, was used to access the ABM Account, was also used to access ABM Backup-1.

iii. ABM Backup-1 was accessed by a second IP address ("IP-2"). Based on my review of records from Cox Communications, which services IP-2, I have learned that IP-2 is registered in the name of "Greg Murray" at a particular address ("Address-1") in the vicinity of Chesapeake, Virginia. Based on my review of publicly available information, I believe that Greg Murray is MURRAY's father.

b. ABM Backup-1 listed another email address ("ABM Backup-2") as its associated "Recovery" address. Based on my review of emails and records associated with ABM Backup-2, I have learned the following, in substance and in part:

i. ABM Backup-2 was accessed by a third IP address ("IP-3"). Based on my review of records from Cox Communications, which also services IP-3, I have learned that IP-3 is registered in the name of "The Gbs Group." Based on my review of account application records for a particular brokerage firm ("Broker-1"), I have learned that MURRAY listed "the GBS Group" as his employer in seeking to open an account.

ii. IP-2 and IP-3 were both used to access ABM Backup-2 (in addition to being used to access ABM Backup-1).

iii. On or about December 23, 2016, ABM Backup-2 was used to make a reservation on a travel website in the name of "Robb Murray."

iv. On or about September 15, 2016, ABM Backup-2 was used in an attempt to order a computer. The order provided another individual's name but listed Address-1 as the shipping destination. As discussed above, Address-1 is the address associated with IP-2.

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[3] The name supplied by the user of ABM Backup-1 on the above-referenced hotel receipt was different than the name supplied by the user of ABM Backup-1 in emails received from a purchase of tickets to an event and also different from the name supplied by the user of ABM Backup-1 in emails from another vendor. Additional names were also found in emails sent and received by ABM Backup-2, which is defined below.

TRADING IN CONNECTION WITH THE NOV. 9 FILING

12. Based on my review of records relating to an account at a particular brokerage firm ("Broker-2") held in the name of "Robert Murray," I have learned the following, in substance and in part:

a. On or about November 9, 2016, prior to the purported ABM tender offer being publicly filed on the SEC's EDGAR system, ROBERT WALTER MURRAY, the defendant, purchased approximately 149 call options for Fitbit stock for a total of approximately $997.27.[4] These options, moreover, all had expiration dates of November 11, 2016 and strike prices of either $8.50 or $9.00 per share.

b. On or about November 10, 2016, after the publication of the Nov. 9 Filing, MURRAY sold approximately 149 call options for Fitbit stock for a total of approximately $3,914.08, a return of approximately 300%.

c. The trades referenced above in subparagraphs (a) and (b) were made from IP-3, which, as discussed above, was used to access ABM Backup-2 and is registered in the name of MURRAY's employer.

[4] Based on my training and experience, I know that a call option is an agreement that gives an investor the right to purchase a security at a particular price in the future. I also know, based on my training and experience, that options allow investors to place what are in effect leveraged trades on the direction of a particular security's price.

WHEREFORE, the deponent prays that an arrest warrant be issued for ROBERT WALTER MURRAY, the defendant, and that he be imprisoned or bailed as the case may be.

DIANA CHAU
POSTAL INSPECTOR
UNITED STATES POSTAL SERVICE

Sworn to before me this
5th day of May, 2017

HONORABLE SARAH NETBURN
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK